

AO 243
REV 6/82MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

FILED

United States District Court	District DISTRICT OF MASSACHUSETTS	
Name of Movant ANTHONY MITCHELL	Prisoner No. 90780-038	Docket No. 03-30042
Place of Confinement United States Penitentiary, P. O. Box 1000, Lewisburg, PA 17837		
(include name upon which convicted)		

UNITED STATES OF AMERICA

V. ANTHONY MITCHELL

(full name of movant)

05-30122 - MAP

MOTION

1. Name and location of court which entered the judgment of conviction under attack United States Dis-trict Court for the District of Massachusetts2. Date of judgment of conviction April 26, 20043. Length of sentence 92 months4. Nature of offense involved (all counts) Conspiracy to distribute more than 5 grams of
cocaine base, 21 U.S.C. § 846; Distribution of more than 5 grams of
cocaine base, 21 U.S.C. § 841(a)(1)

5. What was your plea? (Check one)

- (a) Not guilty
- (b) Guilty
- (c) Nolo contendere

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:
NOT APPLICABLE6. Kind of trial: (Check one) NOT APPLICABLE

- (a) Jury
- (b) Judge only

7. Did you testify at the trial?
Yes No NOT APPLICABLE8. Did you appeal from the judgment of conviction?
Yes No

9. If you did appeal, answer the following:

(a) Name of court NOT APPLICABLE

(b) Result NOT APPLICABLE

(c) Date of result NOT APPLICABLE

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?

Yes No

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court NOT APPLICABLE

(2) Nature of proceeding NOT APPLICABLE

(3) Grounds raised NOT APPLICABLE

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

(5) Result NOT APPLICABLE

(6) Date of result NOT APPLICABLE

(b) As to any second petition, application or motion give the same information:

(1) Name of court NOT APPLICABLE

(2) Nature of proceeding NOT APPLICABLE

(3) Grounds raised NOT APPLICABLE

(4) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes No

(5) Result NOT APPLICABLE

(6) Date of result NOT APPLICABLE

(c) As to any third petition, application or motion, give the same information:

(1) Name of court NOT APPLICABLE

(2) Nature of proceeding NOT APPLICABLE

(3) Grounds raised NOT APPLICABLE

(4) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes No

(5) Result NOT APPLICABLE

(6) Date of Result NOT APPLICABLE

(d) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes No NOT APPLICABLE

(2) Second petition, etc. Yes No

(3) Third petition, etc. Yes No

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

It was my understanding that my plea of guilty and the resulting waiver of my right to file a Direct Appeal and a collateral attack foreclosed any post-conviction remedies that I might have.

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.
CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Conviction obtained by plea of guilty which was un-

lawfully induced or not made voluntarily or with under-

Supporting FACTS (tell your story briefly without citing cases or law): ...standing of the
nature of the charge and the consequences of the plea.

The evidence, both forensic and circumstantial was, as a
matter of law, legally insufficient, to prove beyond a rea-
sonable doubt that Petitioner either possessed and/or dis-
tributed cocaine base "crack" on the charged dates and times.

B. Ground two: Denial of the effective assistance of counsel; failure
to file an ex-parte motion for Expert Witness - Voice Analysis.

Supporting FACTS (tell your story briefly without citing cases or law): There was no actual
proof beyond a reasonable doubt that the alleged voice heard
on the audio recording device is that of Anthony Mitchell.

Both the (CW) and Jerome Jody Clark had ample reasons to lie
about Mitchell's alleged involvement in order to curry favor
with the Government for money and leniency respectively.

C. Ground three: Denial of the right to appeal, plea bargaining
counsel failed to file either a timely and/or any notice...

Supporting FACTS (tell your story briefly without citing cases or law): After he was con-
victed and sentenced, Petitioner requested counsel to file...
a timely notice of appeal in his behalf, pursuant to then
existing Supreme Court precedents. Counsel absolutely did
not file any notice of appeal whatsoever... which resulted

in constitutionally deficient performance and/or representation within the meaning of clearly established Federal Law...

D. Ground four: Government failed to meet its burden of proof on the charged Conspiracy, Title 21 U.S.C. § 846, Possession...

Supporting FACTS (tell your story *briefly* without citing cases or law): with Intent to Distribute and Distribute Cocaine base, because the evidence clearly demonstrated that not only did Petitioner not possess any cocaine base "crack", therefore, he could never have distributed any cocaine base "crack"; but likewise, Petitioner never agreed with Jerome Jody Clark to possess with the intent to distribute and distribute cocaine base "crack".

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: None of the grounds listed in 12A, B, C, and D have previously been presented due to the aforementioned ineffective and deficient assistance and performance by counsel.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?
Yes No

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Mr. J. Jeffrey Yelle, Esquire, 1365 Main Street, Springfield, Massachusetts 01103, (413) 732-9760 - FAX# (413)-739-2783.

(b) At arraignment and plea Same As Above

(c) At trial Not applicable

(d) At sentencing Mr. J. Jeffrey Yelle, Esquire, 1365 Main St., Springfield, MA 01103, (413) 732-9760 - FAX# (413) 739-2783.

(e) On appeal NOT APPLICABLE

(f) In any post-conviction proceeding NOT APPLICABLE

(g) On appeal from any adverse ruling in a post-conviction proceeding NOT APPLICABLE

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes No

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

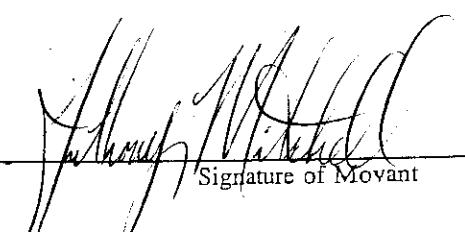
Yes No

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

(date)



Signature of Movant

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of maintaining the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS [PETITIONER] ANTHONY MITCHELL		DEFENDANTS [RESPONDENT] UNITED STATES OF AMERICA																																																																																																																											
(b) County of Residence of First Listed Plaintiff <u>Hamblen</u> (EXCEPT IN U.S. PLAINTIFF CASES)		County of Residence of First Listed Defendant <u>Not Applicable</u> (IN U.S. PLAINTIFF CASES ONLY)																																																																																																																											
(c) Attorney's (Firm Name, Address, and Telephone Number) Pro-se Litigant		Attorneys (If Known) Michael J. Sullivan, USA																																																																																																																											
II. BASIS OF JURISDICTION (Place an "X" in One Box Only)		III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																																																																																																																											
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V. ORIGIN (Place an "X" in One Box Only)																																																																																																																													
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify) <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment																																																																																																																									
VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):																																																																																																																													
Brief description of cause: 28 U.S.C. § 2255 Motion to Vacate, Set Aside or Correct																																																																																																																													
VII. REQUESTED IN COMPLAINT:		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$	CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input type="checkbox"/> No																																																																																																																									
VIII. RELATED CASE(S) IF ANY		(See instructions): JUDGE <u>Michael a. Ponsor</u>	DOCKET NUMBER <u>03cr30042-MAP</u>																																																																																																																										
DATE SIGNATURE OF ATTORNEY OF RECORD																																																																																																																													

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

1. Title of case (name of first party on each side only) Anthony Mitchell vs.
United States of America

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.

II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. for patent, trademark or copyright cases

III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310,
315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371,
380, 385, 450, 891.

IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660,
690, 810, 861-865, 870, 871, 875, 900.

V. 150, 152, 153

05 - 30122 - 344P

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court

Dkt. 03cr30042-MAP

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES **NO**

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 U.S.C. section 1257?

YES **NO**

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 42.1(d))

YES **NO**

- A. If yes, in which division do all of the non-governmental parties reside?

A. If yes, in which division do all of the non-governmental parties reside?

Central Division

Ward et al.

- B.** If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division

Central Division

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8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions).

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME **Proceeding** **Pro-Se**

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